

1 J. Stephen Peek, Esq. (NV Bar #1758)
2 Jerry M. Snyder, Esq. (NV Bar #6830)
3 Hale Lane Peek Dennison and Howard
4 5441 Kietzke Lane, Second Floor
5 Reno, NV 89511
6 Tel: (775) 327-3000
7 Fax: (775) 786-6179

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AUG 9 2006
U.S. MAGISTRATE JUDGE
DISTRICT OF NEVADA

BY _____ DEPUTY

5 Pillsbury Winthrop Shaw Pittman, L.L.P.
6 David A. Jakopin, CA Bar No. 209950
7 Jonathan D. Butler, CA Bar No. 229638
8 2475 Hanover Street
9 Palo Alto, CA 94304-1114
10 Tel: (650) 233-4500
11 Fax: (650) 233-4545

12 Admitted *Pro Hac Vice* in related Federal Court Case No. 3:06-CV-0056-BES-VPC

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT COURT OF NEVADA**

15 IN THE MATTER OF THE SEARCH OF:

16 The Residence Located at 12720 Buckthorne
17 Lane, Reno, NV and Storage Units 136, 140, 141,
18 142, and 143, Double R Storage, 888 Maestro
19 Drive, Reno, Nevada

Case No. 3:06-MJ-0023-VPC

20 **OPPOSITION TO DENNIS AND BRENDA MONTGOMERY'S AND THE MONTGOMERY**
21 **FAMILY TRUST'S EX PARTE APPLICATION TO ENFORCE TRIAL SUBPOENA;**
22 **COUNTER-MOTION TO QUASH OR MODIFY SUBPOENA**

23 eTreppid Technologies, L.L.C. ("eTreppid") hereby files its Opposition to the Ex Parte
24 Application to Enforce Trial Subpoena filed by Dennis Montgomery, Brenda Montgomery and the
25 Montgomery Family Trust (collectively, "Montgomery") in the above-entitled action, and eTreppid
26 also hereby files its Counter-Motion to Quash or Modify Subpoena.

27 This Opposition and Counter-Motion are filed under seal, pursuant order made by the Second
28 Judicial District Court. Declaration of Jerry Snyder In Support Of Opposition to Ex Parte Application
to Enforce Trial Subpoena ("Snyder Decl."), ¶ 3, Ex. 1. The Opposition and Counter-Motion are
supported by the following points and authorities.

POINTS AND AUTHORITIES

I. INTRODUCTION

Through the present motion, Montgomery seeks to compel the production of certain eTreppid documents and tangible things pursuant to a subpoena. Montgomery asserts that the information requested would be relevant to showing that the United States did not have probable cause to seek a search warrant. This assertion is based on Montgomery's contention that the evidence would support his ownership (as opposed to eTreppid's) of the technology at issue. Although eTreppid (which is not a party to this proceeding) is not fully aware of the parties' respective positions, the information that Montgomery seeks would not support his ownership claims regarding the technology in question. Further, Montgomery's Application and the underlying subpoena are procedurally and substantively defective.

Accordingly, the Court should deny the Application and quash the subpoena. In the alternative, the Court should modify the subpoena so that: (1) Montgomery must abide by the terms of a mutually-agreeable Protective Order or, absent such an Order, eTreppid's proposed protective order from its civil case (now before this Court as Case No. 3:06-cv-00145), (2) Montgomery cannot disclose the documents to any third party, (3) Montgomery cannot use the documents for any purpose other than to support his claims or defenses in this proceeding, and (4) Montgomery must destroy the documents (including all copies thereof) within five days after the conclusion of this action.

II. STATEMENT OF RELEVANT FACTS

A. eTreppid and Montgomery are currently litigating the issue of ownership.

eTreppid and Montgomery are currently involved in two actions before this Court relating to their respective ownership claims for the technology in question. eTreppid initiated one action in Nevada state court (now before this Court as Case No. 3:06-cv-00145) that generally relates to trade secret misappropriation by Montgomery, and Montgomery initiated the other action in Nevada federal court (Case No. 3:06-cv-00056), that generally relates to allegations of copyright infringement by eTreppid. Both of these disputes center around ownership of certain computer source codes and software with data compression, object tracking, pattern recognition and anomaly detection applications.

1 Dennis Montgomery was employed as eTreppid's Chief Technology Officer, and as such he
2 was responsible for helping to develop this technology for eTreppid by using its engineers, hardware,
3 and financial resources. From December 2005 to January 2006, Dennis Montgomery stole this
4 technology from eTreppid's facilities, deleted it from eTreppid's workstations and servers, erased the
5 video surveillance footage from eTreppid's computers, and then presented eTreppid with an ultimatum
6 to pay an exorbitant ransom or face the destruction of its stolen technology. On January 19, 2006,
7 eTreppid filed suit against Montgomery in the Second Judicial District Court for the State of Nevada,
8 alleging *inter alia* misappropriation of trade secrets and breach of fiduciary duty.

9 Although the two actions between eTreppid and Montgomery are still in the early procedural
10 stages, it is noteworthy that eTreppid sought and obtained a Preliminary Injunction Order (the "PI
11 Order") against Montgomery on February 8, 2006 – less than three weeks after eTreppid initiated its
12 action. Judge Perry of the Nevada state court based his ruling on a lengthy evidentiary hearing (the
13 "PI Hearing"), at which counsel elicited testimony from Dennis Montgomery, eTreppid's president
14 Warren Trepp, and other eTreppid employees. As evidenced by the PI Order, Judge Perry found that
15 eTreppid is likely to prevail on the merits of its claim for trade secret misappropriation, and the ruling
16 bars Montgomery from destroying and/or distributing the source codes that he stole from eTreppid.
17 Snyder Decl., Ex. 2 (PI Order, at 2:7-11 and 3:6-12).

18 Montgomery subsequently filed his unverified Federal Complaint to assert ownership of the
19 technology at issue, based on his purported copyrights. Montgomery removed eTreppid's action to
20 federal court on spurious grounds, but the PI Order is still in effect. To date, Montgomery has not
21 provided any cognizable evidence to support his ownership claims – and contrary to his claims in the
22 present Application that he "is the owner of the technology at issue," the only court that has heard
23 Montgomery's testimony regarding those ownership claims ruled that eTreppid would likely prevail as
24 owner of the technology.

25 **B. Montgomery and eTreppid are currently negotiating a protective order.**

26 In connection with the federal action initiated by Montgomery, eTreppid first provided a draft
27 protective order to Montgomery's counsel on May 11, 2006, following the suggestion made by this
28 Court (at a hearing an eTreppid's motion for a protective order) that the parties attempt to stipulate to

1 the terms of such an order. Snyder Decl., ¶ 5, Ex. 3. eTreppid's proposed protective order provided
2 for two-tier protection of sensitive materials by allowing the producing party to designate materials
3 produced as either confidential (allowing counsel, agents and parties to view the materials) or
4 restricted confidential (allowing counsel and agents – but not parties – to view the materials). *Id.*
5 eTreppid considers this two-tier protective order (which allows for a tier of very highly confidential
6 information of each party that cannot be seen by the other party) to be appropriate because
7 Montgomery is no longer an employee of eTreppid, and as such he should not be permitted
8 unrestricted access to the very materials he stole from eTreppid. Montgomery's counsel has suggested
9 a protective order that would allow Dennis Montgomery access to all materials. The parties are still
10 negotiating the terms of this protective order.

11 C. Montgomery has tried repeatedly to obtain the requested information in the
12 related civil matter.

13 On July 26, 2006, Montgomery provided counsel for eTreppid with a list of documents that
14 Montgomery believed eTreppid was obliged to provide through its Rule 26(f) initial disclosures. This
15 list, which includes a total of twenty-eight categories, appears to include all fourteen categories of
16 documents that Montgomery seeks to obtain through the present subpoena. In this same letter,
17 Montgomery confirmed the parties agreement that each side would make initial disclosures on August
18 7, 2006. Snyder Decl., ¶ 6, Ex. 4. On August 7, 2006, eTreppid provided Montgomery with its initial
19 disclosures, identifying approximate 750 pages of relevant documents. Snyder Decl., ¶ 7, Ex. 5.
20 Notably, many of the identified documents are responsive to the requests made in Montgomery's July
21 26, 2006 letter and in the present subpoena. *Id.*

22 On July 24, 2006, Montgomery adopted a different approach to obtain some of the requested
23 documents by sending eTreppid a letter to demand, as a "member" of eTreppid, that he be allowed to
24 inspect and copy a wide variety of business records. Snyder Decl., ¶ 8, Ex. 6. eTreppid responded that
25 Montgomery would be allowed to inspect those records to which he is entitled under NRS 86.241, but
26 only upon reasonable notice and upon Montgomery's written agreement to maintain the confidentiality
27 of those documents. Snyder Decl., ¶ 8, Ex. 7. Montgomery refused to comply with eTreppid's
28 conditions and, on both July 27 and July 28, knowing there is no basis under the Nevada law for a

1 member to send an accountant to inspect the company's records sent an accountant, Mr. Greg Gilbert,
 2 to review the requested records,. eTreppid did not allow Mr. Gilbert to review the records.

3 **D. Montgomery never effected proper service of the subpoena on eTreppid.**

4 Having failed to obtain the records and information by other means, Montgomery is now
 5 attempting to obtain them with the subject subpoena. On Thursday July 27, 2006, while Mr. Gilbert
 6 was attempting to gain access to eTreppid's records, Montgomery also apparently attempted to serve a
 7 subpoena on eTreppid at 2080 McCloud Avenue. Snyder Decl., ¶ 9, Ex. 8. eTreppid is located on
 8 Trademark Drive, and has no connection to McCloud Avenue. Snyder Decl., ¶ 9. The July 27 proof
 9 of service attached to the subpoena claims that the process server spoke to an eTreppid employee by
 10 the name of Jesse Anderson, who informed the process server that no one was available to accept
 11 service. The proof of service further states that eTreppid's counsel Jerry Snyder would not accept
 12 service – when in fact Mr. Snyder stated that he could not accept service for lack of authorization to do
 13 so. Snyder Decl., ¶ 9.

14 On Friday July 28, Montgomery again attempted to serve the subpoena, this time by leaving a
 15 copy of the subpoena with a "John Doe" at 2080 McCloud Avenue. This purported service is clearly
 16 deficient and ineffective; eTreppid does not employ anyone by the name of "John Doe", nor does it
 17 maintain any premises at 2080 McCloud Avenue. It is perplexing that Montgomery would seek to
 18 serve the subpoena at this address when the Nevada Secretary of State's website clearly identifies
 19 eTreppid's agent for service of process as GKL Resident Agents. Further, assuming that "John Doe"
 20 refers to some unnamed individual, Montgomery has not demonstrated (nor can he) that the individual
 21 in question is employed by or affiliated with eTreppid – much less authorized to accept service of a
 22 subpoena on its behalf.

23 Even though eTreppid was never served with the present subpoena, it obtained a copy of the
 24 document and, on July 28, notified Montgomery of its objections. Snyder Decl., ¶ 10, Ex. 9. eTreppid
 25 also hand-delivered a copy of its objections to Montgomery's counsel on July 31, immediately prior to
 26 the hearing on this matter.

27 **E. Montgomery never served the *Ex Parte* Application on eTreppid.**

28 eTreppid was unaware of Montgomery's *Ex Parte* Application to Enforce Trial Subpoena (the

1 "Application to Enforce") until August 2, 2006, when the Court granted Montgomery's *Ex Parte*
 2 Application for an Order Shortening Time. eTreppid immediately contacted Montgomery to request a
 3 copy of the Application to Enforce. Montgomery's counsel Michael Flynn promised to provide a
 4 copy. However, Mr. Flynn failed to make good on this promise. Snyder Decl., ¶ 11.

5 On August 4, Montgomery's counsel informed eTreppid that the matter was sealed, and so
 6 they would not provide eTreppid with a copy of the Application to Enforce absent notification from
 7 the Court that eTreppid could review it. Snyder Decl., ¶ 11, Ex. 10. Accordingly, eTreppid obtained a
 8 copy of Montgomery's Application directly from this Court. *Id.*

9 **III. ARGUMENT**

10 **A. Montgomery's subpoena is procedurally defective.**

11 The Court should refuse to enforce Montgomery's subpoena because it is procedurally
 12 defective and because Montgomery never effected proper service of the subpoena on eTreppid.

13 Montgomery's subpoena is defective because Montgomery never effected proper service on
 14 eTreppid. Instead of properly serving the subpoena at eTreppid's business address on Trademark
 15 Drive, Montgomery's service agent left a copy at an unrelated address and then attempted to serve Mr.
 16 Snyder – who informed her that he lacked authorization to accept service of the subpoena on
 17 eTreppid's behalf.

18 Proper service requires that Montgomery deliver a copy of the subpoena to eTreppid.
 19 Although Rule 45 does not articulate how to effect service on a business entity, Rule 4 provides that
 20 "service upon a domestic or foreign corporation... shall be effected: (1)... by delivering a copy of the
 21 summons and of the complaint to an officer, managing or general agent, or to any other agent
 22 authorized by appointment or by law to receive service of process..." FED. R. CIV. PROC. 4(h).

23 Montgomery did not deliver a copy of the subpoena to any officer, managing agent, or other
 24 agent for service of process. Instead, as set forth in the Affidavit of Service, Montgomery attempted
 25 service by delivering a copy of the subpoena to counsel for eTreppid, and to a "John Doe" at an
 26 address that has no apparent connection to eTreppid. Montgomery could have accomplished service
 27 by delivering a copy of the subpoena to GKL Resident Agents, which is clearly identified as
 28 eTreppid's agent for service of process. Having failed to properly serve this subpoena, Montgomery

1 cannot now assert that eTreppid is obliged to comply with its requests.

2 **B. Montgomery failed to provide notice of the Application to Enforce.**

3 Montgomery asserts that eTreppid is in contempt of court for failing to provide documents in
 4 response to the subject subpoena, contending that “[o]bviously, a trial subpoena served pursuant to
 5 Fed. R. Civ. P. 45 must be obeyed, absent a protective order.” Application to Enforce, at 3:23-24.

6 To the contrary, Rule 45 provides that a party served with a subpoena may, “before the time
 7 specified for compliance if such time is less than 14 days after service of the subpoena,” serve written
 8 objections to the subpoena upon the requesting party – at which point “the party serving the subpoena
 9 shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an
 10 order of the court by which the subpoena issued.” FED. R. CIV. PROC. 45(c)(2)(A). Rule 45 further
 11 provides that Montgomery may obtain a court order for compliance with the terms of the subpoena: “if
 12 objection has been made, the party serving the subpoena may, upon notice to the person commanded to
 13 produce, move at any time for an order to compel the production.” *Id.*

14 Notwithstanding the clear obligations imposed by the rules of procedure, Montgomery failed to
 15 provide any notice of the Application to Enforce. In effect, Montgomery has asked the Court to grant
 16 the Application to Enforce without providing a noticed motion to eTreppid. This approach violates not
 17 only the specific requirements of Rule 45, but also the fundamental due process notions of notice and
 18 the opportunity to be heard. Accordingly, the Court should deny the Application to Enforce and quash
 19 Montgomery’s subpoena.

20 **C. Montgomery’s subpoena does not allow reasonable time for compliance.**

21 Rule 45 provides that this Court “shall quash or modify” a subpoena which “fails to allow a
 22 reasonable time for compliance.” FED. R. CIV. PROC. 45(c)(3)(A). Montgomery did not attempt to
 23 serve the subject subpoena on eTreppid until Thursday July 27, and the subpoena demanded
 24 production of documents at a hearing scheduled for Monday July 31.

25 As explained below, Montgomery’s subpoena is extremely broad and burdensome.
 26 Accordingly, even if the subpoena were properly served and not otherwise objectionable, Montgomery
 27 has not provided reasonable time for compliance. If this Court grants Montgomery’s Application to
 28 Enforce in whole or in part, the Court should allow eTreppid at least two weeks to collect the

1 requested records.

2 **D. Montgomery's subpoena is overbroad.**

3 Montgomery's subpoena is overbroad and unduly burdensome. First, Montgomery seeks
4 production of records that can have no conceivable bearing on whether or not the United States had
5 probable cause to search Dennis Montgomery's residence. Second, Montgomery has not taken any
6 "reasonable steps to avoid imposing an undue burden or expense" on eTreppid, as required by Rule 45
7 of the Federal Rules of Civil Procedure; Montgomery first attempted to serve the subpoena on July 27,
8 only four days prior to the demanded production date. This short time-frame presents an undue burden
9 on eTreppid. Third, Montgomery's subpoena seeks access to commercially-sensitive, privileged and
10 confidential records without restricting Montgomery's ability to disclose those records to third parties
11 or to use them for other purposes.

12 As addressed below in further detail, Montgomery's subpoena is overbroad because it demands
13 production of such broad categories of documents as:

14

- 15 • "all minutes and records of the Management Committee" (Request No. 4);
- 16 • "all documents... delivered to any US Governmental Officer after December 1, 2005" (Request No. 7);
- 17 • "all inventories of the contents of any safe maintained by eTreppid and/or Warren
18 Trepp" (Request No. 9);
- 19 • "all employment agreements signed by any employee in the company" (Request No. 11); and
- 20 • "all of Warren Trepp's emails, correspondence, and communications of every nature
21 and description" with six named individuals, as well as "any agent or employee of any
Governmental agency" (Request No. 14).

22

23 Montgomery's requests do not include any subject-matter limitations, nor do the majority of
24 requests include any time limitations. For example, Request No. 14 would appear to require
25 production of Mr. Trepp's personal files, including every income tax return that he has filed with the
26 IRS – without even justifying why a subpoena directed at eTreppid should entitle Montgomery to Mr.
27 Trepp's personal files! Likewise, Request No. 9 (which demands inspection of the inventories of
28 every safe maintained by eTreppid and/or Mr. Trepp) appears to include within its scope any personal

1 safe used by Mr. Trepp, even if unrelated to eTreppid's business; this request could require production
2 of Mr. Trepp's will, of collectable baseball cards or of any other personal documents that he might
3 "maintain" in a safe.

4 The Court should deny Montgomery's subpoena as grossly overbroad and unduly burdensome.

5 **E. Montgomery's subpoena specifically requests privileged documents.**

6 Rule 45 provides that this court "shall quash or modify the subpoena if it... (iii) requires the
7 disclosure of privileged or other protected matter and no exception or waiver applies." FED. R. CIV.
8 PROC. 45(c)(3)(A). Montgomery's subpoena specifically requests all correspondence between Warren
9 Trepp, eTreppid's president, and Doug Frye, an attorney who represents both Mr. Trepp and eTreppid.
10 All such correspondence is protected by the attorney-client privilege and/or the attorney work product
11 privilege – so this request seeks privileged information. Accordingly, the Court should deny this
12 request and/or modify the subpoena to excuse eTreppid from producing such privileged documents.

13 **F. eTreppid is entitled to a protective order because the subpoena seeks**
14 **commercially-sensitive documents.**

15 Rule 45 provides that a court "may order appearance or production only upon specified
16 conditions" for any subpoena that "requires the disclosure of a trade secret or other confidential
17 research, development, or commercial information." FED. R. CIV. PROC. 45(c)(3)(B). Further, "[t]he
18 court must balance the need for discovery by the requesting party and the relevance of the discovery to
19 the case against the harm, prejudice or burden to the other party. One factor to be considered in
20 assessing the burden of complying with a subpoena is whether the moving party is a non-party to the
21 litigation." *Cmedia, LLC v. LifeKey Healthcare, LLC*, 216 F.R.D. 387, 389 (N.D. Tex. 2003)
22 (citations omitted).

23 Montgomery's subpoena clearly requests disclosure of eTreppid's trade secret and
24 commercially-sensitive information, which relate both to eTreppid's business operations and the
25 technical specifications of eTreppid's software. eTreppid is not a party to this action, and it appears
26 that Montgomery is seeking the requested records for use in the ongoing civil litigation and for his
27 own personal use. In deference to the parties' ongoing negotiations for implementation of a joint
28 protective order in that litigation, any production of eTreppid's trade secret or commercially-sensitive

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1 documents should be governed by the following restrictions: (1) Montgomery must abide by the terms
 2 of a mutually-agreeable Protective Order or, absent such an Order, eTreppid's proposed protective
 3 order from its civil case (now before this Court as Case No. 3:06-cv-00145), (2) Montgomery cannot
 4 disclose the documents to any third party, (3) Montgomery cannot use the documents for any purpose
 5 other than to support his claims or defenses in this proceeding, and (4) Montgomery must destroy the
 6 documents (including all copies thereof) within five days after the conclusion of this action.

7 These necessary restrictions would safeguard eTreppid's confidential and proprietary data.
 8 Further, Montgomery cannot assert that these restrictions would prevent him from using the records in
 9 this proceeding because the restrictions would permit Montgomery's counsel, independent experts and
 10 the Court itself to view those records.

11 **G. Objections to particular requests.**

12 Request No. 1 seeks "CD No. 1 referenced in the September 28, 1998 'Contribution
 13 Agreement.'" CD No. 1 is relevant, but there is no reason to believe the compact disc at issue is
 14 within eTreppid's possession, custody, or control; at the PI Hearing, Warren Trepp testified that he
 15 could not recall whether Montgomery ever provided this compact disc. Snyder Decl., **Ex. 1**
 16 (Transcript for PI Hearing, Vol. 1, at 240:6-15).

17 Request No. 2 seeks "the original Sept. 28, 1998 'Contribution Agreement' and all schedules,
 18 attachments, amendments, etc." eTreppid already provided a copy of the Contribution Agreement to
 19 Montgomery prior to the PI Hearing. Accordingly, this request is duplicative, oppressive and unduly
 20 burdensome in that it calls for production of a document already in Montgomery's possession.

21 Request No. 3 seeks "All 'Operating Agreements' of eTreppid and Intrepid from 1998 to the
 22 present, and all schedules, attachments, amendments, etc." Once again, eTreppid provided these
 23 documents to Montgomery prior to the PI Hearing.

24 Request No. 4 seeks "All minutes and records of the Management Committee from 1998 to
 25 present." This request is overbroad; it is not reasonably limited to those minutes and records which
 26 relate to Montgomery's ownership claims for the technology at issue.

27 Further, Montgomery's unfounded allegations that Mr. Trepp "committed corporate fraud" are
 28 unrelated to the stated need to establish Montgomery's purported ownership interest. Montgomery

1 claims that Mr. Trepp reduced his ownership interest in eTreppid "from 30% to 8%, while taking
 2 enormous distributions for himself and his friends." Montgomery's current ownership interest in
 3 eTreppid is 29.619%.

4 Montgomery's allegations are knowingly false. The only distributions eTreppid has never paid
 5 were to Mr. Montgomery in connection with the redemption of a portion of his interest in the company
 6 in an amount in excess of \$3,000,000.00 and a tax distribution made to the members in 2006. Any
 7 reduction in Montgomery's percentage ownership interest in eTreppid occurred in connection with the
 8 sale or other voluntary transfer or his failing to invest additional capital. As established at the
 9 Preliminary Injunction Hearing, Montgomery requested and was allowed the opportunity to redeem his
 10 shares in eTreppid in exchange for a total payment of approximately \$3.0 million. (Transcript for PI
 11 Hearing, Vol. 2, at 81:21-83:7). Accordingly, even if they were relevant to this proceeding,
 12 Montgomery's allegations of "corporate fraud" lack merit. Quite the contrary, Montgomery was the
 13 only member of eTreppid who ever received distributions unrelated to tax obligations and it enriched
 14 him by millions of dollars!

15 Request No. 5 seeks "all patent applications submitted by Intrepid or eTreppid." This request
 16 is overbroad and seeks production of confidential information. eTreppid has already provided
 17 Montgomery with copies of numerous patents issued to eTreppid for inventions related to object
 18 tracking, compression, pattern recognition, and anomaly detection. Snyder Decl., **Ex. 5**. Further, any
 19 pending applications are confidential until published – yet another reason that any should be governed
 20 by a protective order.

21 Request No. 6 seeks reports "setting forth what 'Trade Secrets' are either present or missing
 22 within the eTreppid software system." This request is improper and unduly burdensome, and it further
 23 seeks access to confidential and proprietary documents without requiring Montgomery to either
 24 maintain the secrecy or prevent dissemination of information regarding eTreppid's trade secrets.

25 Montgomery has also not established how a complete register of eTreppid's trade secrets could
 26 possibly relate to this proceeding. It seems clear that Montgomery does not desire access to
 27 eTreppid's trade secrets for use in this proceeding, but is rather using this subpoena to obtain
 28 information to which he has not gained access in his ongoing civil litigation with eTreppid. As shown

1 by the existence of the Order from PI Hearing, Montgomery cannot be trusted with eTreppid's trade
2 secrets or with any information relating to those trade secrets. Snyder Decl., **Ex. 2** (PI Order).

3 This request appears to require eTreppid to prepare detailed expert reports far in advance of the
4 deadline for expert disclosures in the ongoing civil litigation. Montgomery asserts that the requested
5 reports would show that eTreppid reported the theft of software that eTreppid knew was not a trade
6 secret. Even if this unfounded allegation were true, the only reports that could possibly be relevant to
7 this proceeding are those reports that were already in eTreppid's possession, custody or control when
8 the search warrant issued. The Court should require Montgomery to limit the scope of this request
9 accordingly. Further, to the extent that any such documents are relevant to the criminal proceeding,
10 the Court should not allow Montgomery to use documents obtained from this subpoena in a manner
11 inconsistent with the terms of a protective order in the civil litigation.

12 Request No. 7 seeks all reports "delivered to any US Governmental official after December 1,
13 2005." This request is clearly overbroad and seeks confidential information; it does not provide any
14 limitation on the subject matter of the reports. Further, the request is overbroad and unduly
15 burdensome because it does not specify which individual(s) delivered any such report; the request
16 would oblige eTreppid to produce a tremendous amount of information (including, for example,
17 withholding tax records and income tax returns), much of which could not possibly relate to this
18 proceeding. The Court should require Montgomery to limit the scope of their request.

19 Request No. 8 seeks all documents relating to "eTreppid or any of its agents, employees
20 consultants etc [sic] and the security clearance of Dennis Montgomery." This request is unduly
21 burdensome in that it would require eTreppid to canvass its facility and computers for all responsive
22 documents. In addition, as Montgomery would have been required to complete any applications for
23 security information, he undoubtedly has retained copies. As phrased, the request would also call for
24 production of privileged documents such as eTreppid's communications with counsel. Further, neither
25 the subpoena nor the Application to Enforce specify how these documents could possibly relate to this
26 proceeding.

27 Request No. 9 demands "All inventories of the contents of any safe maintained by eTreppid
28 and/or Warren Trepp." Montgomery asserts that this information is relevant to show that any

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classified documents at issue were stored in a safe at eTreppid's facility. Accordingly, the Court should require Montgomery to limit the scope of his request to only require production of an inventory of the classified materials maintained in a safe at eTreppid's facility as of the date that the search warrant issued.

Request No. 10 seeks "all software programs or any portions thereof currently existing at eTreppid which you claim constitute eTreppid's 'Trade Secrets.'" This request clearly seeks production of privileged materials, in contravention of the Rule 45 provisions protecting such materials. As discussed above, it appears that Montgomery may be using this request to gain access to eTreppid's confidential and proprietary information for his personal use and for use in his ongoing civil litigation with eTreppid. As mentioned in numerous ways previously, Montgomery cannot be trusted with eTreppid's trade secrets, and the only court to have heard testimony regarding this matter agreed. Snyder Decl., Ex. 2 (PI Order). Further, the request is overbroad because it would require disclosure of trade secrets unrelated to the technology at issue.

Request No. 11 seeks "all employment agreements signed by any employee in the company." This request is overbroad and seeks information which violates the privacy of eTreppid employees.

Request No. 12 seeks all revisions and editions, past and present, of eTreppid's employee manual – asserting that such information would show "terms on the handling of classified information." Contrary to Montgomery's assertions, the handling of classified information is governed by federal law, not by any employment term. As such, the requested information is not relevant to Montgomery's challenge of the validity of Special Agent West's search warrant.

Request No. 13 seeks all "complaints, correspondence, emails and communications between any government official and any eTreppid employee, principal, officer, manager, or Chairman relating to the criminal complaint filed by Warren Trepp or eTreppid against Dennis Montgomery." By seeking documents from eTreppid – which is not a party to this proceeding – Montgomery has failed to "take reasonable steps to avoid imposing undue burden or expense on the person subject to the subpoena."

Request No. 14 seeks all correspondence between Warren Trepp and "Ronald Bath, Paul Hareldsen, James Gibbons, Michael Milken, Douglas Frye, Michael West, and any agent or employee

1 of any government agency.” This request is premised on Montgomery’s assertion that he is “entitled
 2 to know what contacts eTreppid had with any of these individuals, since they are directly tied to the
 3 investigation that led to the issuance of the search warrants that are at issue here.”

4 Rather than providing evidence to support his contention that either Ronald Bath or Paul
 5 Hareldsen – both high-ranking military officers – provided false information to the Government,
 6 Montgomery justifies this request based on his “belief.” This unfounded allegation is underscored by
 7 Montgomery’s other stated “beliefs,” which include:

- 8 • his belief that Nevada gubernatorial candidate Jim Gibbons somehow influenced the
 9 present investigation as a result of “possibly illegal” campaign contributions
 (Application to Enforce, at 11:8-11);
- 10 • his belief that the law firm Hale Lane may have influenced Judge Perry (the judge who
 11 issued the PI Order) by donating to his election campaign, even Judge Perry was
 12 appointed in 2004 and is currently running unopposed (Snyder Decl., Ex. 11 (M. Flynn
 letter dated July 26, 2006) at p.3); and
- 13 • his belief that Warren Trepp is “one of the most notorious financial criminals in all
 14 history” (Snyder Decl., Ex. 11 (M. Flynn letter dated July 26, 2006) at p.2). Mr. Trepp
 has never been indicted in any criminal proceeding.

15 Montgomery and his counsel have established a pattern of leveling wild accusations without
 16 any support, and the Court should require some offer of proof from Montgomery to prevent him from
 17 using and abusing the subpoena process to continue what appears to be an obvious attempt to provide
 18 cover for Mr. Montgomery’s conduct in stealing eTreppid’s trade secrets.

19 Montgomery also requests all correspondence between Messrs. Trepp and Frye. This request
 20 is overbroad and seeks production of privileged documents. As Montgomery is aware, Mr. Frye is
 21 counsel for both eTreppid and Mr. Trepp personally, so any such correspondence is privileged.

22 Finally, even if this request were relevant (eTreppid maintains it is not), it is incredibly
 23 overbroad because it does not include any limitations based on time or subject matter. In order to
 24 comply with this request as phrased, Mr. Trepp could be forced to search through records that date
 25 back twenty years or more.

26 ///

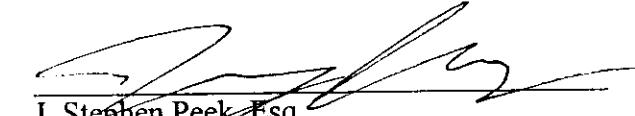
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1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court should (i) deny Montgomery's Application to Enforce and
3 (ii) quash and/or modify Montgomery's subpoena.

4 Dated: August 9, 2006.

5 
6 J. Stephen Peek, Esq.
7 Nevada Bar Number 1758

8 Jerry M. Snyder, Esq.
9 Nevada Bar Number 6830

10 Hale Lane Peek Dennison and Howard
11 5441 Kietzke Lane, Second Floor
12 Reno, Nevada 89511
13 Tel: (775) 327-3000
14 Fax: (775) 786-6179

15 *Attorneys for eTreppid Technologies, L.L.C. and
16 Warren Trepp*

17 Hale Lane Peek Dennison and Howard
18 5441 Kietzke Lane, Second Floor
19 Reno, Nevada 89511
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PROOF OF SERVICE

I, Paul D. Cain, declare:

I am employed in the **City of Reno, County of Washoe, State of Nevada**, by the law offices of Hale Lane Peek Dennison and Howard. My business address is: **5441 Kietzke Lane, Second Floor, Reno, Nevada 89511**. I am over the age of 18 years and not a party to this action

I am readily familiar with Hale Lane Peek Dennison and Howard's practice for collection of mail, delivery of its hand-deliveries, and its process of faxes.

On August 9, 2006, I caused the foregoing **OPPOSITION TO DENNIS AND BRENDA MONTGOMERY'S AND THE MONTGOMERY FAMILY TRUST'S EX PARTE APPLICATION TO ENFORCE TRIAL SUBPOENA; COUNTERMOTION TO QUASH OR MODIFY SUBPOENA** to be delivered:

X by hand-delivering a true copy thereof in a sealed envelope, addressed as follows:

Fax No. 786-5044

Ronald J. Logar, Esq.

Eric A. Pulver, Esq.

The Law Offices of Logar & Pulver

225 S. Arlington Avenue, Suite A

225 B. Washington
Reno NV 89501

X by faxing a true copy thereof to the fax number indicated below and by placing a true copy thereof in Hale Lane Peek Dennison and Howard's outgoing mail in a sealed envelope, addressed as follows:

Fax No. 888-235-4279

Michael J. Flynn, Esq.

Michael J. Flynn, Esq.
Philip H. Stillman, Esq.

Philip H. Stillman
Flynn & Stillman

Hyatt & Stankman
224 Birmingham Dr., Ste. 1A4

221 Birmingham B
Cardiff, CA 92007

X by faxing a true copy thereof to The Hon. Valerie P. Cooke's chambers (at 775-686-5864) and by hand-delivering the original opposition to chambers (400 South Virginia Street, Room 404 Reno, Nevada 89501) per Judge Cooke's August 2, 2006 instructions

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on August 9, 2006.

Pal D. C. -

Paul D. Cain